IN THE HIGH COURT OF UTTARANCHAL AT NANITAL

WRIT PETITION NO. 1966 (SS) OF 2005

Kapil Chawla
Aged about 25 years,
S/o Late Sri Pawan Kumar Chawla,
R/o Main Road Vikas Nagar,Dehradun ....Petitioner.

Versus

1. State of Uttaranchal, through Secretary, Education Department, Secretariat at Dehradun.
2. The Director of Education, Uttaranchal, Dehradun.
3. The Joint Director Education, Garhwal Mandal, Pauri.
4. The District Education Officer, Dheradun.

.....Respondents.

Mr. Subhash Upadhyay, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 28.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondent authorities to consider the case of the petitioner and to appoint the petitioner as Assistant Teacher, L.T. Grade (Physical Education) under the U.P. Recruitment of Dependant of Government Servants Dying in Harness Rules, 1974.

2. Brief stated, the father of the petitioner was working as a Lecturer in Civics at Government Inter College, Barotiwala, Dehradun and during his service he expired on 24th September, 2003. The father of the petitioner was a regular employee, who had completed 15 years and 8 months of service prior to his death.

3. On 9th August, 2004, the petitioner after the death of his father moved an application for the appointment against the post of L.T. Grade, Assistant Teacher (Physical Education) and the said application was forwarded by the District Education Officer, Dehradun to the Regional Joint Director of Education Garhwal Mandal, Pauri on 10th August, 2004.

4. On 27th August, 2004, the Incharge Director, Education wrote a letter to the Regional Joint Director, Garhwal Mandal, Pauri directing him to pay 90% of G.P.F. amount, leave encashment and other dues and to give appointment to the petitioner under the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974.

5. Petitioner has submitted that the respondent no. 3 did not consider the case of the petitioner for appointment under the Dying in Harness Rules and as such the petitioner made a representation on 11.12.2004 to the respondent no. 3 through Registered Post.

6. On 25th July, 2005, another representation was moved by the mother of the petitioner before the Director, Education, Uttaranchal by which the grievance of the petitioner was raised and the said letter was also received by the respondent on the same day.

7. On 4th October, 2005, the Deputy Director of Education referred the matter for appointment of the petitioner under the Dying in Harness Rules to the respondent no. 3, but no action has been taken by the respondent no. 3 till date.

8. The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the Sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

6. Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection. In the same judgment it has also been observed as under:-

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

9. In ***Santosh Kumar Mishra Vs. State of U.P. [(2002) 1 UPLBEC 337***. It has been held as under:-

" Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government servant in view of the fact that his appointment has

been converted into work charge employee in pursuance of the scheme approved by the Apex Court . He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years, until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U.P. and others, reported in 1999 (3) ESC 2187 (All): 1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

"The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge

employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for."

" It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy."

10. It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

11. In view of the above, respondents are directed to dispose of the representation of the petitioner dated 25th July, 2005, (Annexure No. 8 to the writ petition) in the light of the above

said case laws from the date of presentation of the certified copy of the order.

12. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

28.02.2006

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